

## Message Text

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ACTION L-03

INFO OCT-01 ARA-14 ISO-00 SCA-01 SCS-05 DHA-02 JUSE-00  
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R 101551Z JUN 77  
FM AMEMBASSY MEXICO  
TO SECSTATE WASHDC 2762

UNCLAS MEXICO 09422

E.O. 11652:N/A  
TAGS: CASC,MX  
SUBJECT: US-MEXICAN PRISONER TRANSFER TREATY

REF: STATE 123185 AND MEXICO 08974

1. PER REF A, THE FOLLOWING ARE THE COMMENTS REQUESTED ON  
THE DRAFT RESPONSES TO THE QUESTIONS SUBMITTED BY THE  
SFRC STAFF.

2. ARTICLE 3, QUESTION 2: IN THE MIDDLE OF THE PARAGRAPH  
WHERE REFERENCE IS MADE TO PRELIMINARY WORK BEING DONE BY  
USG, DEPARTMENT MAY WISH TO ADD THAT GOM IS ALSO IN  
PROCESS OF PREPARING FOR EXCHANGE.

3. ARTICLE 5, QUESTION 5: RATHER THAN INDICATE THAT IT  
WOULD APPEAR NECESSARY TO DECLINE TO ACCEPT A TRANSFER  
WHERE THE SEVERITY OF THE SENTENCE BETWEEN THE TWO COUN-  
TRIES IS SUFFICIENT TO CONSTITUTE CRUEL AND UNUSUAL  
PUNISHMENT, IT IS SUGGESTED THAT THE ENTIRE SENTENCE BE  
STRICKEN. IF THE CONGRESS AND THE STATES OF THE UNITED  
STATES MOVE TOWARD DECRIMINALIZATION OF MARIJUANA POSSESSION,  
FOR EXAMPLE, IT WOULD BE UNFORTUNATE NOT TO BE ABLE TO  
ACCEPT SUCH A CASE. ON THE CONTRARY THIS WOULD BE THE  
TYPE OF CASE THAT THE EMBASSY HAD UNDERSTOOD AND WOULD  
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PARTICULARLY HOPE THE TREATY MIGHT BE APPLICABLE TO.  
SHOULD THE SITUATION ARISE WHERE THE TREATY BECAME INAPPLI-  
CABLE, THE EMBASSY WOULD PREFER THAT THE PROBLEM BE  
RESOLVED THROUGH A PROTOCOL AMENDING TREATY ON THIS POINT.  
THE EMBASSY WOULD PREFER THAT THE RESPONSE TO THIS  
QUESTION BE AMENDED ALONG THE ABOVE LINES.

4. ARTICLE VII, QUESTION 1: THERE IS A DIFFERENCE OF OPIN-

ION AS TO THE INTENT AND RESULTANT MEANING OF THIS ARTICLE AMONGST THE PARTICIPANTS: COUNSELOR FOR CONSULAR AFFAIRS, MCANINCH AND COUNSELOR FOR POLITICAL AFFAIRS, STARRS, RECALL THAT THE INTENT WAS TO PRECLUDE ANY PROSECUTION, STATE OR FEDERAL, FOR THE "SAME OFFENSE UPON WHICH THE SENTENCE TO BE EXECUTED WAS BASED". THIS VIEW HOLDS THAT THE PHRASE "IN THE RECEIVING STATE" WOULD BAR PROSECUTION BY A STATE AS WELL AS THE FEDERAL AUTHORITY. EMBASSY LEGAL ADVISER GAITHER, IS OF THE VIEW THAT WHILE THERE WAS A GENERAL INTENT TO PRECLUDE ANOTHER PROSECUTION, THERE WAS A DEFINITE INTENT NOT TO INFRINGE UPON THE RIGHTS OF STATES AND THUS THE SECOND SENTENCE OF THE ARTICLE PUT THE ISSUE UP TO PRACTICE OF THE LAW OF THE JURISDICTION IN WHICH THE INDIVIDUAL MIGHT BE SUBJECT TO PROSECUTION. UNDER THIS VIEW, THE POTENTIAL TRANSFEREE WOULD HAVE TO BE GIVEN LEGAL ADVICE ON THE APPLICATION OF THE PROVISION TO POTENTIAL PROSECUTION UPON HIS RETURN TO THE UNITED STATES. MOREOVER, MR. GAITHER RECALLS THAT THE FINAL LANGUAGE FOR THIS PARAGRAPH WAS REDRAFTED IN WASHINGTON AT A MEETING WITH JUSTICE OFFICIALS. AS MESSRS MCANINCH AND STARRS DID NOT ATTEND THE WASHINGTON SESSIONS THEY WOULD NOT HAVE BEEN AWARE OF THIS NEGOTIATING HISTORY. IF IT IS CONCLUDED THAT A TRANSFERRED PRISONER CAN BE SUBJECTED TO PROSECUTION IN THE U.S. FOR THE SAME OFFENSE FOR WHICH HE WAS SENTENCED ABROAD, THE EMBASSY BELIEVES THAT A SUBSTANTIAL NUMBER OF PRISONERS WHO ARE PRESENTLY INCLINED TO ACCEPT TRANSFER WILL DECIDE NOT TO RETURN UNDER THE TREATY.

5. CANADA-MEXICO DIFFERENCE, QUESTION 2: AS THE NEGOTIATIONS UNCLASSIFIED

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ARE REMEMBERED HERE, WE HAVE TWO SUGGESTIONS:

A) IN THE FIRST SENTENCE, WE RECALL THAT THERE WAS A BASIC PHILOSOPHIC DIFFERENCE BETWEEN THE GOM AND THE USG. THE GOM DID NOT VIEW IT LEGALLY CORRECT FOR THE PRISONER TO COMMENCE OR APPEAR TO INITIATE THE REQUEST FOR TRANSFER. THEY FELT NO PRISONER HAD OR SHOULD HAVE SUCH A RIGHT. IF IT WERE TO BE GRANTED, IT MIGHT THEN CAUSE THEM JUDICIAL REVIEW PROBLEMS IN THE SENSE THAT IT MIGHT GIVE PRISONERS A LEGAL RIGHT THEY WOULD NOT OTHERWISE HAVE. WE WOULD SUGGEST FOLLOWING POSSIBLE LANGUAGE:

QUOTE THE FORMULATION OF ARTICLE IV (1) Z DUE TO A PHILOSOPHIC DIFFERENCE IN LEGAL SYSTEMS WHEREBY THE MEXICAN AUTHORITIES DID NOT WISH TO GRANT A PRISONER A RIGHT TRINITPATE##

THE TRANSFER DUE TO CONCERN THAT THIS COULD BE CONSTRUED AS A LEGAL RIGHT WHICH COULD BE SUBJECT TO JUDICIAL ENFORCEMENT AGAINST THE EXECUTIVE. END QUOTE

B) RE THE SECOND SENTENCE OF ARTICLE IV (1), THE PRIMARY PURPOSE OF THAT SENTENCE WAS TO ENABLE A PRISONER TO RE-

QUEST TRANSFER IF, DUE TO A BUREAUCRATIC BREAKDOWN, HE WAS NEVER GIVEN THE OPPORTUNITY. WE CAN READILY SEE THAT THE PROVISION COULD OPERATE TO ASSIST A PRISONER WHOSE REQUEST WAS INITIALLY REJECTED OR WHO HIMSELF FIRST DECLINED TRANSFER.

ALTHOUGH MINOR, IT MAY BE NOTED THAT THIS REQUEST FOR CONSIDERATION GOES TO THE MEXICAN GOVERNMENT, NOT THE U.S. THE DRAFT RESPONSE SEEMS NOT ENTIRELY CLEAR ON THIS LATTER POINT. THOMPSON

NOTE BY OC/T: ##AS RECEIVED.

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## Message Attributes

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